

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 14 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LEANDRO LEONEL GONZALEZ,

No. 19-56149

Plaintiff-Appellant,

D.C. No. 3:17-cv-02104-CAB-
WVG

v.

A. RENTERIA, Correctional Officer; et al.,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of California
Cathy Ann Bencivengo, District Judge, Presiding

Submitted December 2, 2020**

Before: WALLACE, CLIFTON, and BRESS, Circuit Judges.

California state prisoner Leandro Leonel Gonzalez appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging various constitutional claims. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

The district court properly granted summary judgment for defendant Renteria because Gonzalez failed to raise a genuine dispute of material fact as to whether Renteria's conduct amounted to an unnecessary and wanton infliction of pain. *See Jordan v. Gardner*, 986 F.2d 1521, 1525-26 (9th Cir. 1993) (en banc) (the Eighth Amendment prohibits "only the unnecessary and wanton infliction of pain"; evidence of no more than "momentary discomfort caused by the search procedures" does not meet the "constitutional standard for a finding of pain" (citation and internal quotation marks omitted)).

The district court properly granted summary judgment for defendant Romero because Gonzalez failed to raise a triable dispute as to whether Romero was deliberately indifferent to a substantial risk of serious harm to Gonzalez when he did not intervene during the searches performed by Renteria. *See Farmer v. Brennan*, 511 U.S. 825, 834, 836 (1994) (for an Eighth Amendment failure-to-protect claim, the plaintiff must show the deprivation alleged was "objectively, sufficiently serious" and the defendant was deliberately indifferent to a "substantial risk of serious harm" (citation and internal quotation marks omitted)); *Cunningham v. Gates*, 229 F.3d 1271, 1289 (9th Cir. 2000) (officers "have a duty to intercede when their fellow officers violate the constitutional rights of a suspect or other citizen" (citation and internal quotation marks omitted)).

The district court properly granted summary judgment for defendant Segovia

because Gonzalez failed to raise a triable dispute as to whether Segovia's alleged actions would have chilled a person of ordinary firmness from exercising his or her First Amendment rights. *See Brodheim v. Cry*, 584 F.3d 1262, 1269, 1271 (9th Cir. 2009) (discussing elements of a retaliation claim in the prison context and objective standard governing the chilling inquiry).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.